




applicant will be irreparably injured absent a stay; (3) whether issuance of the stay will substantially injure the other parties interested in the proceeding; and (4) where the public interest lies.” Hilton v. Braunskill, 481 U.S. 770, 776 (1987).

The court disagrees with respondent’s position that he has a strong likelihood of success on appeal. However, the court finds that consideration of the other Hilton factors warrant granting respondent’s motion. It is likely that the appeal will not be completed prior to the expiration of the 180-day period provided in the court’s January 6, 2011, order. The State should not have to initiate new sentencing proceedings against petitioner while the appeal is pending, nor would compelling the State to do so be in the public interest. Further, petitioner will not be substantially injured by a stay. Petitioner remains convicted of first-degree murder, and as respondent contends, petitioner is not subject to execution of the sentence of death at this time. See N.C. Gen. Stat. § 15-194.

Accordingly, respondent’s motion for a stay of execution of judgment [DE #35] is GRANTED. The final judgment of this court is stayed pending completion of respondent’s appeal to the Fourth Circuit Court of Appeals.

SO ORDERED, this 2 day of March 2011.

  
TERRENCE W. BOYLE  
UNITED STATES DISTRICT JUDGE